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11 FACEBOOK, INC.

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION  
15

16 FACEBOOK, INC.,

17 Plaintiff,

18 v.

19 POWER VENTURES, INC. a Cayman Island  
20 corporation, STEVE VACHANI, an individual;  
DOE 1, d/b/a POWER.COM, DOES 2-25,  
21 inclusive,

22 Defendants.  
23  
24  
25  
26  
27  
28

Case No. 5:08-cv-05780-LHK

**FACEBOOK'S REPLY RE: MOTION  
FOR CONTEMPT**

Date:

Time:

Dept:

Judge:

Courtroom 8, 4th Floor

Hon. Judge Lucy H. Koh

1 Facebook respectfully requests that the Court find Defendants in contempt and issue coercive  
2 sanctions in the form a per diem fine and compensatory sanctions to cover Facebook's attorneys'  
3 fees for the instant motion. Defendants' refusal to take this matter seriously and continued  
4 disrespect for these proceedings bolsters the showing of contempt set forth in Facebook's opening  
5 brief.

6 On February 15, 2017, the Court entered an order requiring Defendant Power to pay  
7 sanctions by March 15, 2017. Dkt. 410. Power never complied. On May 2, 2017, the Court entered  
8 a permanent injunction requiring Defendants to certify compliance with the injunction and to  
9 provide details of their compliance efforts under penalty of perjury by no later than May 5 and  
10 May 9, 2017, respectively. Dkt. 437. Defendants never complied with these orders either. Based  
11 on Defendants' repeated violations of the Court's unambiguous orders, Facebook filed a motion for  
12 contempt on May 16, 2017. Dkt. 447.

13 Other than an untimely *ex parte* application for an extension of time filed the day after their  
14 opposition papers were due (Dkt. 449), Defendants have done absolutely nothing to respond to the  
15 serious violations identified in Facebook's motion. Defendants never filed any opposition to  
16 Facebook's contempt motion and have therefore waived any arguments they might have had. *See*  
17 N.D. Cal. Local Civil Rule 7-1 ("opposition must be filed and served not more than 14 days after the  
18 motion was filed"); *Pascual v. Wells Fargo Bank, N.A.*, 2014 U.S. Dist. LEXIS 18592, \*27-28 (N.D.  
19 Cal. Feb. 13, 2014) (failure to timely oppose motion resulted in waiver); *Stebly v. Bank of N.Y.*  
20 *Mellon*, 2012 U.S. Dist. LEXIS 154982, \*6 (E.D. Cal. Oct. 28, 2012) (failure to respond "deemed a  
21 statement of non-opposition to the granting of the motion"); *Richmark Corp. v. Timber Falling*  
22 *Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) (finding waiver of contemnors arguments that  
23 were not timely raised); *Gwaduri v. INS*, 362 F.3d 1144, 1146 (9th Cir. 2004) (noting that courts  
24 may find that "lack of timely opposition is tantamount to a concession").

25 In addition to their failure to oppose Facebook's motion, Defendants have made no attempt  
26 to purge themselves of their contempt. Weeks have elapsed and Defendants have chosen to do  
27 nothing to effect compliance with any of the Court's outstanding orders. Defendants' conduct cries  
28

1 out for a finding of contempt, and Defendants' failure to even respond to Facebook's motion for  
 2 contempt underscores the need for contempt sanctions. "[T]o neglect and ignore a date for action in  
 3 a court proceeding is in reality a thinly-veiled species of disrespect or contempt for the Court."  
 4 *Johnson v. Town of Babylon*, 78 F.R.D. 337, 339 (E.D.N.Y. Apr. 25, 1978) (quoting *Canup v.*  
 5 *Mississippi Valley Barge Line Co.*, 31 F.R.D. 282, 282 (W.D. Pa. 1962)); *see also Shipley v. Dep't of*  
 6 *Educ.*, 2006 U.S. Dist. LEXIS 60643, \*15 (D. Haw. Aug. 23, 2006) (sanctioning attorney for  
 7 repeatedly failing to timely respond to court orders).

8 For the reasons set forth in Facebook's opening brief and discussed above, Facebook  
 9 respectfully requests that the Court grant Facebook's motion for contempt.

10  
 11  
 12  
 13 Dated: June 6, 2017

Respectfully Submitted,

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